Chapter 1: The TIFIA Credit Program

> *"§189. Report to Congress*
>
> *"Not later than 4 years after the date of enactment of this subchapter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this subchapter, including a recommendation as to whether the objectives of this subchapter are best served –*
>
> *"(1) by continuing the program under the authority of the Secretary;*
>
> *"(2) by establishing a Government corporation or a Government-sponsored enterprise to administer the program, or*
>
> *"(3) by phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this subchapter without Federal participation."*
>
> **Transportation Equity Act for the 21st Century (TEA 21)**
> **June 9, 1998**

1.0 Purpose of this Report

As part of its 1998 enactment of TEA 21, Congress established a unique Federal credit program for large transportation projects. Sections 1501 to 1504 of TEA 21, collectively the Transportation Infrastructure Finance and Innovation Act of 1998[1] (TIFIA), authorize the U.S. Department of Transportation (DOT) to provide three forms of credit assistance – secured (direct) loans, loan guarantees and standby lines of credit – to surface transportation projects of national or regional significance. This Report to Congress fulfills the requirement, cited above, to summarize the financial performance of the projects assisted by TIFIA and to discuss alternatives for achieving the program objectives in the future.

1.1 Policy Considerations

The public policy underlying the TIFIA credit program asserts that the Federal Government can perform a constructive role in supplementing, but not supplanting, existing capital finance markets for large transportation infrastructure projects. Section 1502 of TEA 21 states that "…a Federal credit program for projects of national significance can complement existing funding resources by filling market gaps, thereby leveraging substantial private co-investment." Because the TIFIA program offers credit assistance, rather than grant funding, its potential users are "infrastructure projects that are capable of generating their own revenue streams through user charges or other dedicated funding sources…."[2]

---

[1] The Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) appears as sections 1501 through 1504 of the Transportation Equity Act for the 21st Century (TEA 21, Public Law 105-178), as amended by the TEA 21 Restoration Act (Title IX of Public Law 105-206). The substance of the legislation is codified within sections 181 through 189 of title 23 of the U.S. Code (23 U.S.C. 181-189), with supporting regulations appearing in part 80 of title 49 of the Code of Federal Regulations (49 CFR 80). These documents are included in Appendix A of this report.
[2] TEA 21, Public Law 105-178, June 9, 1998, Section 1502.

Identifying a constructive role for Federal credit assistance begins with the acknowledgement that, compared to private investors, the Federal Government's naturally long-term investment horizon means that it can more readily absorb the relatively short-term risks of project financings. Absent typical capital market investor concerns regarding timing of payments and financial liquidity, the Federal Government can become the "patient investor" whose long-term view of asset returns enables the project's non-Federal financial partners to meet their investment goals, allowing the project's sponsors to complete a favorable financing package.

Prior to enactment of TIFIA, Congress identified three transportation projects where Federal credit assistance was needed to complete a financing package.

Appropriations in fiscal years 1993 and 1995[3] allowed the DOT to offer two lines of credit up to $120 million each to the Transportation Corridor Agencies (TCA) of Orange County, California. Aided by the first line of credit, the TCA sold $1.26 billion of revenue bonds in 1995 to help construct its $1.8 billion Foothill/Eastern Transportation Corridor toll road. The second line of credit helped TCA sell $1.45 billion of revenue bonds in 1997 to refund debt previously sold to construct its San Joaquin Hills Corridor toll road. By providing back-up loans should revenues fail to meet debt service and operating expenses during the toll roads' first 10 years of use, these lines of credit improved the credit ratings of the bonds, increasing their marketability while lowering interest costs.

In fiscal year 1997[4], Congress appropriated funds to allow the DOT to loan up to $400 million to help construct the $2.4 billion Alameda Corridor, a project to improve landside freight connections to the Ports of Los Angeles and Long Beach, California. This direct loan has a claim on container fees and port charges levied on cargo carriers. In order for the Alameda Corridor Transportation Authority (ACTA) to sell $998 million of bonds in 1999 backed by the same revenues, the DOT lien was subordinated to this senior debt.

The DOT's experience in the TCA and ACTA financings, ad hoc responses to project needs, demonstrated the constructive role for direct Federal credit in specific circumstances. The Department's subsequent research[5] indicated that certain other transportation projects around the nation might benefit from such assistance. A programmatic response to the potential financial needs of expensive, complex and important surface transportation projects, the TIFIA legislation incorporates several concepts developed during the TCA and ACTA financings. Building on these individual projects, TIFIA allows for a systematic and consistent approach to evaluating and selecting projects for credit assistance.

The ultimate success of TIFIA, however, need not be reflected by extensive program duration. As stated in the Conference Report accompanying TEA 21 and TIFIA, "[a]n objective of the program is to help the financial markets develop the capability ultimately to supplant the role of the Federal Government in helping finance the costs of large projects of national significance."[6] Providing TIFIA credit assistance, of course, creates fiscal relationships of potentially 35-plus years between the DOT and individual project sponsors. On this level, at least, TIFIA's impact will be enduring.

---

[3] FY 1993 and FY 1995 Department of Transportation and Related Agencies Appropriations Acts (Public Laws 102-388 and 103-331).
[4] FY 1997 Omnibus Consolidated Appropriations Act (Public Law 104-208).
[5] Federal Credit for Surface Transportation: Exploring Concepts and Issues, Federal Highway Administration, November 1997.
[6] TEA 21 Conference Report to Accompany H.R. 2400 (105-550), page 435, May 22, 1998.

1.2 Project Eligibility

Congress established wide-ranging eligibility for potential TIFIA projects. Credit assistance is available to highway, transit, passenger rail and multi-modal projects. Any type of facility eligible for grant assistance under DOT's Federal Highway Administration (FHWA) programs (title 23 of the U.S. Code, or 23 U.S.C.) such as interstate and state highways, bridges and toll roads, is eligible for TIFIA. Similarly, any type of project eligible for grant assistance under DOT's Federal Transit Administration (FTA) programs (chapter 53 of 49 U.S.C.) such as transit vehicles, stations, track and other transit-related infrastructure is eligible for TIFIA. Intercity passenger rail or bus projects are also eligible for TIFIA assistance, as are publicly owned intermodal facilities on or adjacent to the National Highway System and projects that provide ground access to airports or seaports. In addition, surface transportation projects principally involving the installation of Intelligent Transportation Systems (ITS) are eligible for TIFIA.

Types of project sponsors eligible to receive TIFIA assistance are similarly wide-ranging, such as state departments of transportation, municipal and special purpose governments, transit agencies, railroad operators and private developers. All TIFIA projects must comply with the applicable Federal laws and regulations established for highway, transit or rail grant assistance, including title VI of the Civil Rights Act of 1964, the National Environmental Policy Act of 1969, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

1.2.1 Eligibility Prerequisites

The TIFIA statute sets forth prerequisites for participation in the TIFIA program[7]

- *Total Eligible Costs.* The project's eligible costs must be reasonably anticipated to total at least $100 million, or, alternatively, at least 50 percent of the state's Federal-aid highway apportionments for the most recently completed fiscal year[8], whichever is less. For projects that principally involve ITS, eligible project costs must be reasonably anticipated to total at least $30 million.
- *Application Submission.* Each project sponsor must submit a project application. (An application package is included in DOT's TIFIA Program Guide, available in hard copy and at http://tifia.fhwa.dot.gov.)
- *Transportation Planning Process*. The project must be included in the state's long-range transportation plan and the approved State Transportation Improvement Program (STIP).
- *Dedicated Revenue Sources*. Project financing must be repayable, in whole or in part, from "tolls, user fees and other dedicated revenue sources."[9] Federal policy precludes a pledge of Federal funds as repayment for a TIFIA credit instrument.[10]

[7] 23 U.S.C. 182(a).
[8] 23 U.S.C. 182(a)(3)(B). Based on FY 2001 apportionments, these minimum project sizes would apply in the following states: Delaware, $66.3 million; District of Columbia, $59.3 million; Hawaii, $77.6 million; Maine, $79.8 million; New Hampshire, $77.8 million; North Dakota, $98.2 million; Rhode Island, $89.8 million; Vermont, $68.5 million.
[9] 23 U.S.C. 182((a)(4).
[10] 64 FR 29742 (49 CFR 80.13(c)), June 2, 1999.

- *Public Approval of Privately Sponsored Projects*. Any private entity applying for TIFIA assistance must demonstrate state support for the project via inclusion in the state's transportation plans and programs (the long-range plan and the STIP, as noted above).

1.2.2 Selection Criteria

The DOT evaluates projects that meet the threshold eligibility prerequisites according to eight selection criteria established in the TIFIA statute.[11] Although Congress did not indicate relative priority among these criteria, the DOT has assigned specific weights[12] as shown in Exhibit 1-A below:

Exhibit 1-A: TIFIA Selection Criteria

Selection Criteria	Weighting
National or Regional Significance – generating economic benefits, supporting international commerce, enhancing national transportation system.	20%
Private Participation – fostering innovative public-private partnerships and attracting private debt or equity investment.	20%
Environment – maintaining or protecting the environment.	20%
Project Acceleration – enabling projects to move forward at an earlier date.	12.5%
Creditworthiness – including appropriate security features, such as a rate covenant, to ensure repayment.	12.5%
Consumption of Budget Authority – amount of budget authority required to fund the requested Federal credit instrument.	5%
Use of Technology – enhancing efficiency by using new technologies, including intelligent transportation systems	5%
Reduced Federal Grant Assistance – reducing the contribution of Federal grant assistance.	5%

1.2.3 Credit Rating

In addition to the threshold criteria, the TIFIA statute requires each applicant to provide a preliminary rating opinion letter from at least one nationally recognized credit rating agency[13] indicating that the project's senior obligations have the potential to achieve an investment-grade rating. Projects selected for TIFIA assistance then must receive an investment grade rating on their senior debt obligations.

[11] 23 U.S.C. 182(b).
[12] 65 FR 44936 (49 CFR 80.15), July 19, 2000.
[13] According 23 U.S.C. 181(11), "the term 'rating agency' means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization." The SEC currently identifies three such firms: Standard and Poor's, Moody's Investor Services and Fitch Ratings.

1.3 Credit Instruments

Projects seeking TIFIA assistance can apply for one or more credit instruments:

- ***Secured (Direct) Loan***. A debt obligation involving the DOT as the lender and a non-Federal project sponsor as the borrower. Terms and conditions are negotiated between the DOT and the borrower.

- ***Loan Guarantee***. A pledge by the DOT to a non-Federal lender to pay principal or interest owed by a borrowing project sponsor in the event the sponsor is unable to make debt service payments. Federal funds disbursed under these circumstances would not constitute a grant to the project sponsor; the funds instead would become a subordinate debt obligation to be repaid eventually by the borrower.

- ***Line of Credit***. A standby source of funding in the form of a contingent Federal loan to supplement project revenues during the first 10 years of the project's operations. The project's financial reserves must drop to certain defined levels to draw upon the line of credit.

These three credit instruments share common features:

- ***Amount of Assistance***. The principal amount of TIFIA credit assistance, in any combination of the instruments above, cannot exceed 33 percent of the reasonably anticipated eligible project costs.

- ***Final Maturity***. The final maturity date of any TIFIA credit assistance cannot exceed 35 years after the project's substantial completion date.

- ***Nonsubordination of Lien Priority***. Although the TIFIA claim on project revenues can be subordinated to those of senior lenders, it cannot be subordinated in the event of the bankruptcy, insolvency or liquidation of the obligor. In such an instance, the TIFIA lien would be on parity with senior creditors.

The differentiating characteristics of each TIFIA credit instrument are described in Exhibit 1-B.

Exhibit 1-B: Characteristics of TIFIA Credit Instruments

Characteristics	Direct Loan	Loan Guarantee	Line of Credit
Use of Proceeds	To finance eligible project costs, or To refinance interim construction financing of eligible costs (no later than one year after substantial completion).	To finance eligible project costs, or To refinance interim construction financing of eligible costs (no later than one year after substantial completion).	To pay debt service on obligations (but not the TIFIA credit instrument) issued to finance eligible project costs, extraordinary repair and replacement costs, operating and maintenance expenses, and/or costs due to unexpected environmental restrictions. Available only after substantial completion.
Interest Rate	Equal to or greater than the yield on marketable U.S. Treasury securities of comparable maturity on date of execution of credit agreement.	Negotiated between the guaranteed lender and the borrower, subject to consent from the DOT. Interest payments on a guaranteed loan are subject to Federal income taxation.	Interest rate on a direct loan resulting from a draw on a line of credit will be equal to or greater than the yield on a 30-year marketable U.S. Treasury security on the date the line of credit is obligated.
Disbursements	As frequently as monthly, as costs are incurred for eligible project purposes.	In event of borrower default, guaranteed lender receives payment from the DOT for guaranteed payment due. DOT's payment then becomes a direct TIFIA loan to the borrower.	A draw may be made only if revenues are insufficient. A maximum of 20% of total principal amount of line of credit may be drawn in a single year. Available for 10 years after substantial completion.
Repayments	Based on cash flow forecasts, but must commence no later than five years after date of substantial completion of project.	Based on cash flow forecasts, but must commence no later than five years after date of substantial completion of project.	Based on cash flow forecasts, but must commence no later than five years after the end of the 10-year period of availability.
Deferrals	When revenues are insufficient to meet scheduled TIFIA loan payments within 10 years after substantial completion, DOT may allow payment deferrals.	When revenues are insufficient to meet scheduled TIFIA loan payments within 10 years after substantial completion, DOT may allow payment deferrals.	Not addressed in TIFIA statute.
Prepayment Conditions	May be prepaid in whole or in part at any time without penalty.	Negotiated between lender and borrower.	May be prepaid in whole or in part at any time without penalty.

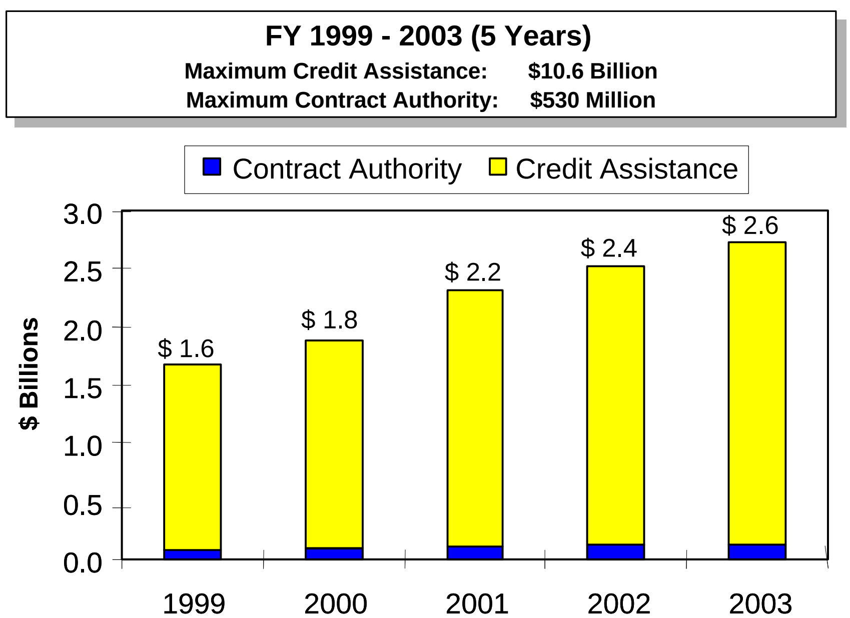
1.4 Funding Authority

Congress has established two authorization levels for the TIFIA program, displayed in Exhibit 1-C below:

- ***Credit Assistance to Projects***. A total of $10.6 billion of TIFIA credit assistance (i.e., the principal amount that may be committed in the form of direct loans, guaranteed loans, and lines of credit) has been made available through the TEA 21 authorization period. Congress allocated this funding authority in progressive amounts over a five-year period, as shown below. At the end of each fiscal year, any uncommitted credit assistance expires and is unavailable for subsequent years.

- ***Subsidy and Administrative Costs of the Program***. From the Highway Trust Fund, Congress authorized $530 million, subject to the annual obligation limitation on Federal-aid highway programs, to pay the subsidy cost of TIFIA credit assistance and related administrative costs. Since enactment of the Federal Credit Reform Act of 1990 (FCRA), Federal agencies must set aside capital reserves in advance to cover the expected long-term cost to the Government of providing credit assistance. Analogous to a private bank's loan reserve, the subsidy cost represents the Federal Government's estimate of expected loss associated with the provision of each TIFIA project's credit instrument. Unlike credit assistance, uncommitted contract authority remains available for obligation in subsequent years. Congress also authorized the DOT to utilize up to $2 million annually of this contract authority to pay for the administrative costs of implementing the TIFIA program.

Exhibit 1-C: TIFIA Funding Authority



1.5 TIFIA and the Capital Markets

State and local government capital outlays for highway and transit projects exceeded $77 billion in 2000, the most recent year in which data are available.[14] Most of these projects were funded by pay-as-you-go (i.e., cash) grants from Federal, state and local sources. Typical of infrastructure investment, however, the need to develop long-term assets requires spending levels that exceed pay-as-you-go resources. As a result, state and local governments sold an estimated $14.5 billion in tax-exempt debt for new surface transportation projects in 2000, representing nearly 20 percent of total capital spending.

Authorized by Congress to invest up to $10.6 billion over five years, the TIFIA program supplements the U.S. municipal bond market, which raised more than $58 billion for transportation projects during the five-year period from 1996 through 2000. These funds reflect decisions by private investors, acting individually or through financial institutions, to lend money to issuers (i.e., by purchasing bonds) in return for future revenue streams.

The U.S. capital market provides funding for projects through a national network of financial service companies. To sell debt to investors, bond issuers typically rely on intermediaries such as securities firms and dealer banks that initially purchase the bonds and then resell them to retail (individual) and institutional investors.

The prices of such bonds (i.e., the interest rate) depend significantly on perceptions of risk, as investors will require a higher return for accepting greater risk. The measure of risk is typically formalized via analyses by bond-rating agencies, which provide independent assessments of credit risk that are reported using well-established scales of “grades” (e.g., “AAA” and “Aaa” being the most secure) that provide succinct rankings of credit quality. Individual and institutional investors then can utilize these ratings to guide their purchase decisions.

An important concept in the bond rating system, already referred to in this report, is the “investment grade” benchmark: a cut-off point beneath which many retail investors and their institutional proxies would consider a credit too speculative to include in a portfolio. As explained in detail in Chapter Four, the TIFIA program introduces a Federal investor that can absorb some of the uncertainty relating to timing of payments, investment horizon, and liquidity. By purchasing a portion of the issuer’s debt – and then subordinating its claim on repayments – TIFIA can help the remaining bonds obtain an investment grade rating and access to a broad range of potential buyers.

[14] Status of Nation’s Highways, Bridges and Transit: Conditions and Performance Report, unpublished, USDOT, 2002.